

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

IN RE: REFRIGERANT COMPRESSORS ANTITRUST LITIGATION	Master Docket No. 2:09-md-2042
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F.G. FARAH & PARTNERS, LLC (D/B/A LISTRANI'S
ITALIAN GOURMET), on behalf of itself and all others
similarly situated,

Civil No. 09-cv-11109-GER-DAS

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTD.A; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

[Additional captions continued on next page]

COOLING ENERGY CORP., individually and on behalf
of all others similarly situated,

Civil No. 09-cv-11125-GER-MJH

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL
LTDA; TECUMSEH DO BRASIL USA, LLC;
WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.;
EMBRACO NORTH AMERICA, INC.; DANFOSS A/S;
DANFOSS COMMERCIAL COMPRESSORS, LTD.;
DANFOSS, INC.; DANFOSS SCROLL
TECHNOLOGIES, LLC; DANFOSS TURBOCOR
COMPRESSORS, INC.; APPLIANCES COMPONENTS
COMPANIES, SPA; ACC USA LLC; PANASONIC
CORPORATION; PANASONIC CORPORATION OF
NORTH AMERICA; EMERSON CLIMATE
TECHNOLOGIES, INC.; and COPELAND
CORPORATION, LLC,

Defendants.

BEATRICE SCANNAPIECO, on behalf of herself and all
others similarly situated,

Civil No. 09-cv-1578-JAG-ES

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

MARIA GOUNARIS, on behalf of herself and all others
similarly situated,

Case No. 09-cv-1717-EDL

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

VICTORIA WINSOLW, INGEGRD HESEL, KARLA P. LEVI, PAT TIEDE, on behalf of themselves and all others similarly situated,

Civil Action No. 09-cv-01104-CCB

Plaintiffs,

v.

APPLIANCES COMPONENTS COMPANIES, S.p.A.;
ACC USA, LLC; DANFOSS A/S; DANFOSS, INC.;
DANFOSS COMMERCIAL COMPRESSORS, LTD.;
DANFOSS SCROLL TECHNOLOGIES, LLC.;
DANFOSS TURBOCOR COMPRESSORS, INC.;
PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
TECUMSEH PRODUCTS CO.; WHIRLPOOL
CORPORATION; WHIRLPOOL, S.A.; and EMBRACO
NORTH AMERICA, INC.;

Defendants.

MARC A. BARASH, on behalf of himself and all others similarly situated,

Civil No. 09-cv-11765-GER-PJK

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

SAAD WHOLESALE, INC., on behalf of itself and all
others similarly situated,

Civil No. 09-cv-12326-DML-RSW

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

NATHAN LEVI ESQUERRA, on behalf of himself and
all others similarly situated,

Civil No. 09-cv-12712-DML-DAS

Plaintiff,

v.

APPLIANCES COMPONENTS COMPANIES, SPA,
ACC USA LLC, DANFOSS A/S, DANFOSS, INC.,
DANFOSS COMMERCIAL COMPRESSORS, LTD.,
DANFOSS SCROLL TECHNOLOGIES LLC,
DANFOSS TURBOCOR COMPRESSORS, INC.,
PANASONIC CORPORATION, PANASONIC
CORPORATION OF NORTH AMERICA, TECUMSEH
COMPRESSOR COMPANY, TECUMSEH DO BRASIL,
LTDA, TECUMSEH DO BRASIL USA, LLC,
TECUMSEH PRODUCTS CO., WHIRLPOOL
CORPORATION, WHIRLPOOL S.A., and EMBRACO
NORTH AMERICA, INC.,

Defendants

MAJORITY PLAINTIFFS' MOTION FOR APPOINTMENT
OF INDIRECT PURCHASER INTERIM CLASS COUNSEL
AND EXECUTIVE COMMITTEE POSITIONS

Williams, Williams, Rattner & Plunkett, P.C., Cohen Milstein Sellers & Toll PLLC, Pomerantz Haudek Grossman & Gross LLP and Straus & Boies LLP ("Movants"), hereby move this Court for entry of an order appointing Interim Class Counsel/Liaison Counsel ("Interim Class Counsel") and members of the Interim Executive Committee for the indirect purchaser Plaintiffs and the proposed class. In support of this Motion, Movants state as follows:

1. The above-captioned actions were brought against several hermetic compressor manufacturers alleging that the Defendants entered into a contract, combination or conspiracy to fix, raise, maintain or stabilize the prices of, and to allocate customers and markets for, refrigerant compressors and/or refrigerant compressor products in violation of various indirect purchaser state antitrust and consumer protection laws.

2. On June 9, 2009, the United States Panel on Multidistrict Litigation ordered that all refrigerant compressor antitrust class actions, including the nine indirect purchaser actions, be transferred to this Court for coordinated or consolidated pretrial proceedings.

3. Following an August 24, 2009 status conference, the Court ordered that Plaintiffs' Motions for Appointment as Interim Class Counsel/Liaison Counsel and for Appointment of the Interim Executive Committee must be filed by September 9, 2009.

4. Pursuant to Federal Rule of Civil Procedure 23(g)(3), the Court may "designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action."

5. Appointment of Interim Class Counsel and an Interim Executive Committee will ensure that the interests of the proposed class of indirect purchaser Plaintiffs are represented and that the prosecution of this litigation proceeds in an efficient and organized manner.

6. Movants request that the Court appoint David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C. as Interim Class Counsel. Mr. Plunkett and his firm have reached an agreement with the undersigned counsel to work jointly to further the interests of the proposed class of indirect purchaser Plaintiffs. The Movants have thus agreed to an organized leadership structure, and respectfully request that the Court appoint an Interim Executive Committee comprised of J. Douglas Richards of Cohen Milstein Sellers & Toll PLLC, Michael M. Buchman of Pomerantz Haudek Grossman & Gross LLP, Timothy D. Battin of Straus & Boies LLP, and David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C.

7. Pursuant to Local Rule 7.1, the undersigned certifies that counsel for Movants have attempted to obtain concurrence from counsel in other related cases for the relief requested herein, but concurrence was not obtained.

8. In further support of this Motion, Plaintiffs submit the accompanying memorandum of law filed contemporaneously herewith.

WHEREFORE, Movants respectfully request that the Court enter an order appointing David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C. as Interim Class Counsel, and J. Douglas Richards of Cohen Milstein Sellers & Toll PLLC, Michael M. Buchman of Pomerantz Haudek Grossman & Gross LLP, Timothy D. Battin of Straus & Boies LLP, and David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C. to the Interim Executive Committee.

A proposed Order Appointing Interim Class Counsel and Interim Executive Committee Positions for Indirect Purchaser Plaintiffs has been submitted as Exhibit 2 to the accompanying memorandum of law.

Dated September 9, 2009

Respectfully submitted,

/s/ David E. Plunkett

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Proposed Interim Executive Committee Members

Air Cooling Energy Corp. v. Tecumseh Products Company, et al.

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Winslow, et al. v. Appliances Components Companies, SPA, et al.

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Susan LaCava
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Madison, Wisconsin 53703
Telephone: (608) 258-1335
Facsimile: (608) 258-1669

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2009, I caused the foregoing Majority Plaintiffs' Motion for Appointment of Indirect Purchaser Interim Class Counsel and Executive Committee Positions and Memorandum of Law in Support to be electronically filed with the Clerk of the Court using the ECF, which will send notification to all counsel of record.

/s/ David E. Plunkett
David E. Plunkett

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

IN RE: REFRIGERANT COMPRESSORS ANTITRUST LITIGATION	Master Docket No. 2:09-md-2042
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F.G. FARAH & PARTNERS, LLC (D/B/A LISTRANI'S
ITALIAN GOURMET), on behalf of itself and all others
similarly situated,

Civil No. 09-cv-11109-GER-DAS

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS, LTD.; DANFOSS
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TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR LLC; WHIRLPOOL CORPORATION;
WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

[Additional captions continued on next page]

<p>COOLING ENERGY CORP., individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TECUMSEH PRODUCTS COMPANY; TECUMSEH COMPRESSOR COMPANY; TECUMSEH DO BRASIL LTDA; TECUMSEH DO BRASIL USA, LLC; WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA, INC.; DANFOSS A/S; DANFOSS COMMERCIAL COMPRESSORS, LTD.; DANFOSS, INC.; DANFOSS SCROLL TECHNOLOGIES, LLC; DANFOSS TURBOCOR COMPRESSORS, INC.; APPLIANCES COMPONENTS COMPANIES, SPA; ACC USA LLC; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; EMERSON CLIMATE TECHNOLOGIES, INC.; and COPELAND CORPORATION, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 09-cv-11125-GER-MJH</p>
<p>BEATRICE SCANNAPIECO, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TECUMSEH PRODUCTS COMPANY; TECUMSEH COMPRESSOR COMPANY; TECUMSEH DO BRASIL, LTDA; TECUMSEH DO BRASIL USA, LLC; DANFOSS A/S; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS, LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.; DANFOSS COMPRESSOR LLC; WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; APPLIANCES COMPONENTS COMPANIES, S.p.A.; and ACC USA, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 09-cv-1578-JAG-ES</p>

MARIA GOUNARIS, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

TECUMSEH PRODUCTS COMPANY; TECUMSEH
COMPRESSOR COMPANY; TECUMSEH DO BRASIL,
LTDA; TECUMSEH DO BRASIL USA, LLC;
DANFOSS A/S; DANFOSS, INC.; DANFOSS
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WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA,
INC.; PANASONIC CORPORATION; PANASONIC
CORPORATION OF NORTH AMERICA;
APPLIANCES COMPONENTS COMPANIES, S.p.A.;
and ACC USA, LLC,

Defendants.

Case No. 09-cv-1717-EDL

<p>VICTORIA WINSOLW, INGEGRD HESEL, KARLA P. LEVI, PAT TIEDE, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>APPLIANCES COMPONENTS COMPANIES, S.p.A.; ACC USA, LLC; DANFOSS A/S; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS, LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; TECUMSEH COMPRESSOR COMPANY; TECUMSEH DO BRASIL, LTDA; TECUMSEH DO BRASIL USA, LLC; TECUMSEH PRODUCTS CO.; WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.; and EMBRACO NORTH AMERICA, INC.;</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 09-cv-01104-CCB</p>
<p>MARC A. BARASH, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TECUMSEH PRODUCTS COMPANY; TECUMSEH COMPRESSOR COMPANY; TECUMSEH DO BRASIL, LTDA; TECUMSEH DO BRASIL USA, LLC; DANFOSS A/S; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS, LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.; DANFOSS COMPRESSOR LLC; WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; APPLIANCES COMPONENTS COMPANIES, S.p.A.; and ACC USA, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 09-cv-11765-GER-PJK</p>

<p>SAAD WHOLESALE, INC., on behalf of itself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TECUMSEH PRODUCTS COMPANY; TECUMSEH COMPRESSOR COMPANY; TECUMSEH DO BRASIL, LTDA; TECUMSEH DO BRASIL USA, LLC; DANFOSS A/S; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS, LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.; DANFOSS COMPRESSOR LLC; WHIRLPOOL CORPORATION; WHIRLPOOL, S.A.; EMBRACO NORTH AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; APPLIANCES COMPONENTS COMPANIES, S.p.A.; and ACC USA, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 09-cv-12326-DML-RSW</p>
<p>NATHAN LEVI ESQUERRA, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>APPLIANCES COMPONENTS COMPANIES, SPA, ACC USA LLC, DANFOSS A/S, DANFOSS, INC., DANFOSS COMMERCIAL COMPRESSORS, LTD., DANFOSS SCROLL TECHNOLOGIES LLC, DANFOSS TURBOCOR COMPRESSORS, INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, TECUMSEH COMPRESSOR COMPANY, TECUMSEH DO BRASIL, LTDA, TECUMSEH DO BRASIL USA, LLC, TECUMSEH PRODUCTS CO., WHIRLPOOL CORPORATION, WHIRLPOOL S.A., and EMBRACO NORTH AMERICA, INC.,</p> <p style="text-align: center;">Defendants</p>	<p>Civil No. 09-cv-12712-DML-DAS</p>

**MEMORANDUM OF LAW IN SUPPORT OF MAJORITY PLAINTIFFS'
MOTION FOR APPOINTMENT OF INDIRECT PURCHASER INTERIM
CLASS COUNSEL AND EXECUTIVE COMMITTEE POSITIONS**

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Manual for Complex Litigation (Fourth) (2004)5, 7

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CONCISE STATEMENT OF ISSUES PRESENTED

Pursuant to the Court's August 24, 2009 Order (DE 73, *In re Refrigerant Compressors Antitrust Litig.*, 2:09-md-2042 (E.D. Mich.)), indirect purchaser plaintiffs F.G. Farah and Partners, LLC, Air Cooling Energy Corp., Beatrice Scannapieco, Maria Gounaris, Victoria Winslow, Ingegerd Hesel, Karla P. Levi, Pat Tiede, Marc A. Barash, Saade Wholesale, Inc. and Nathan Levi Esquerra ("Moving Plaintiffs"), by and through their attorneys, respectfully submit this memorandum of law in support of their motion for appointment of David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C. ("WWRP") as Interim Class Counsel/Liaison Counsel ("Interim Class Counsel") on behalf of the indirect purchaser plaintiffs in this action, and for the appointment of J. Douglas Richards of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), Michael M. Buchman of Pomerantz Haudek Grossman & Gross LLP ("Pomerantz"), Timothy D. Battin of Straus & Boies LLP ("Straus & Boies"), and David E. Plunkett of WWRP to the Interim Executive Committee.¹

¹ The plaintiffs and counsel in eight of the nine indirect purchaser class actions on file support this motion. The only indirect purchaser plaintiff opposing this motion is Bongo Burger, Inc. A list of plaintiffs either making and/or supporting this motion and their counsel is attached as Exhibit A to the Declaration of David E. Plunkett ("Plunkett Decl.") filed herewith at Exhibit 1.

CONTROLLING AUTHORITY FOR THE RELIEF SOUGHT

Under Rule 23(g)(1) and (3), the requested appointments are appropriate because the proposed leadership has performed significant work to advance the litigation, possesses the resources and experience necessary to prosecute the litigation on behalf of the indirect purchaser Plaintiffs and the proposed class, and has near-unanimous support from indirect purchaser Plaintiffs who have cases on file. Fed. R. Civ. P. 23(g)(1)(A), (3).

INTRODUCTION

The proposed Interim Class Counsel and Interim Executive Committee are best able to represent the interests of the class. They were among the first law firms to file cases in this matter and their leadership proposal is supported by the vast majority of indirect purchaser plaintiffs. The proposed leadership has already begun working closely together by, *inter alia*, jointly: (1) moving the Judicial Panel on Multidistrict Litigation (“the MDL Panel”) to centralize the indirect purchaser cases; (2) engaging all indirect purchaser plaintiffs and their counsel in discussions regarding case strategy and organization; (3) conducting an extensive factual investigation into the industry and Defendants’ conspiracy as well as consulting with industry and economic experts; and (4) working collaboratively to create a consolidated complaint.

To successfully prosecute this complex antitrust action against these large, well-financed corporate Defendants will require considerable skill and resources on the part of plaintiffs’ counsel.² The proposed leadership comprises well-capitalized and experienced law firms with the demonstrated ability to efficiently manage and fund the prosecution of this multi-district proceeding.

Additionally, the appointment of the proposed Interim Class Counsel and Interim Executive Committee is supported by the vast majority of indirect purchaser plaintiffs and their attorneys. Moving Plaintiffs therefore respectfully request that the Court appoint David E. Plunkett as Interim Class Counsel and J. Douglas Richards, Michael M. Buchman, Timothy D. Battin, and David E. Plunkett as members of the Interim Executive Committee for the indirect purchaser plaintiffs.

² Defendants are currently being investigated for price-fixing by antitrust authorities in at least three different jurisdictions (the United States, the European Union, and Brazil).

I. PROCEDURAL BACKGROUND

Beginning in late February, 2009, plaintiffs across the country began filing suit against Defendants for injuries resulting from Defendants' alleged participation in a long-standing price-fixing conspiracy. Each of the indirect purchaser Class Actions asserts that the Defendants entered into a contract, combination or conspiracy to fix, raise, maintain or stabilize the prices of, and to allocate customers and markets for, refrigerant compressors and/or refrigerant compressor products in violation of various indirect purchaser state antitrust and consumer protection laws.³ Plaintiffs are seeking damages as well as injunctive relief under Section 16 of the Clayton Act on behalf of themselves and a proposed plaintiff class.

On June 9, 2009, the MDL Panel transferred all refrigerant compressor antitrust class actions to this Court for coordinated or consolidated pretrial proceedings.⁴ All nine of the cases filed on behalf of indirect purchasers have now been transferred to this Court.

II. ARGUMENT

Before deciding whether to certify a proposed class action,⁵ a court may appoint interim class counsel to act on behalf of the proposed class. Fed. R. Civ. P. 23(g)(3). In substantial class actions such as this one, it is well-established that district court judges appoint interim class counsel to coordinate prosecution of the matter for plaintiffs. *See In re Bendectin Litig.*, 857 F.2d 290, 297 (6th Cir. 1988); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 774-75 (9th Cir. 1977); *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1014-15 (5th Cir. 1977); *Farber v. Riker-Maxson Corp.*, 442 F.2d 457, 459 (2d Cir. 1971); accord *In re OnStar Contract Litig.*, Order Appointing Interim Lead Counsel for Plaintiffs, DE 39, No. 2:07-md-01867-SFC

³ Compressors are devices that compress refrigerant gases to produce a cooling effect. Compressors are integral components in compressor products such as refrigerators or air-conditioners.

⁴ The actions listed in Schedule A of the Transfer Order, together with numerous "tag along" actions that have been or may subsequently be filed, are referred to herein as the "Class Actions."

⁵ Pursuant to Fed. R. Civ. P. 23(g)(1), "... a court that certifies a class must appoint class counsel."

(E.D. Mich. Jan 7, 2008) (Cox, J.). Indeed, “it is almost standard practice for the court to issue an order at an early stage. . . .” H. Newberg & A. Conte, *Newberg on Class Actions*, § 9.35 at 9-99 (3 ed. 1992).

The appointment of a leadership structure imposes order on what otherwise might become an inefficient, if not unruly, proceeding. Appointing counsel to a reasonable leadership structure will ensure “efficiency and economy without jeopardizing fairness to the parties in the litigation.” *Manual for Complex Litigation* (Fourth) (2004) (“*Manual*”) § 10.221 (“The types of appointments and assignments of responsibilities will depend on many factors. The most important is achieving efficiency and economy without jeopardizing fairness to the parties.”).⁶ “[T]he primary responsibility of class counsel, resulting from appointment as such, is to represent the best interests of the class.” *Coleman v. General Motors Acceptance Corp.*, 220 F.R.D. 64, 100 (M.D. Tenn. 2004); *see also In re Packaged Ice Litig.*, 2009 WL 1518428, *4 (E.D. Mich. 2009) (appointing counsel “best able to represent the interests of the class”); *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D. 552, 554 (S.D. Ohio 2005).

With these aims in mind, Federal Rule of Civil Procedure 23(g)(1)(A) sets out those factors that must be considered in connection with the appointment of class counsel:

- the work counsel has done in identifying or investigating potential claims in the action;
- counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in the action;
- counsel’s knowledge of the applicable law; and
- the resources counsel will commit to representing the class

⁶ The appointment of counsel in consolidated litigation, and its efficiency in avoiding delay, overlap and duplication of effort, is long recognized. *See MacAlister v. Guterman*, 263 F.2d 65, 69 (2d Cir. 1958) (court noted that “[t]he benefits achieved by consolidation and the appointment of general [lead] counsel, i.e., elimination of duplication and repetition and in effect the creation of a coordinator of diffuse plaintiffs through whom motions and discovery proceedings will be channeled, will most certainly redound to the benefit of all parties to the litigation.”).

Fed. R. Civ. P. 23(g)(1)(A); *see also*, *Int'l Union, et al. v. Ford Motor Co.*, 2008 WL 4104329 (E.D. Mich. 2008).⁷

In addition to the considerations listed in Fed. R. Civ. P. 23(g)(1), courts commonly give weight to plaintiffs' counsel's approach of self-selection. *See, e.g., In re Intel Corp. Microprocessor Antitrust Litig.*, Slip Op., DE 51, No. 1:05-md-1717 (D. Del. April 18, 2006) ("The most common approach to the selection of class counsel is private ordering, in which plaintiffs' counsel agree on which of them should serve as class counsel.") (citation omitted) (Ex. 4); *Manual*, § 21.272 (2004) ("By far the most common [method for selecting among competing applicants] is the so-called 'private ordering' approach: The lawyers agree who should be co-lead class counsel and the court approves the selection after a review to ensure that the counsel selected is adequate to represent the class interests.").

Because of the size of this antitrust class action and the number of lawsuits involved, the appointment of Interim Class Counsel and an Interim Executive Committee is warranted to promote efficiency and economy in the representation of all indirect purchaser plaintiffs. *Nowak v. Ford Motor Co.*, 240 F.R.D. 355, 360 (E.D. Mich. 2006) (Ex. 3) ("Because of the large number of parties in this . . . action, efficient management of the case mandates the selection of lead counsel. . .). Further, the considerations established by Rule 23(g)(1)(A) and the consensus of the parties involved support the appointment of David E. Plunkett as Interim Class Counsel and J. Douglas Richards, Michael M. Buchman, Timothy D. Battin, and David Plunkett to the Interim Executive Committee for the proposed class.

⁷ Courts apply the criteria for determining class counsel under Rule 23(g)(1) to the appointment of interim class counsel. *See, e.g., In re Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005); *see also In re Mun. Derivatives Antitrust Litig.*, 252 F.R.D. 184, 186 (S.D.N.Y. 2008) ("When appointing interim class counsel, courts generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A)" (citing *In re Air Cargo Shipping Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006))).

A. The Proposed Interim Leadership Has Already Taken Steps to Advance the Litigation.

The proposed interim leadership has actively furthered this litigation on behalf of their clients and proposed class through their own efforts and their coordination of the efforts of numerous plaintiffs' counsel. For instance, the proposed leadership has consulted with all indirect purchaser counsel to reach agreement on an organizational structure best able to represent the interests of the class and that maximizes the resources available to prosecute this action.⁸ These firms have actively investigated the factual underpinnings of the alleged price-fixing conspiracy and are in the process of drafting a Consolidated Class Action Complaint. They have consulted industry and economic experts to better understand the nature of Defendants' conspiracy and its impact on consumers. *See Manual* § 10.22 ("In some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be encouraged.").

B. The Proposed Leadership Has the Experience, Knowledge, and Resources to Serve the Proposed Class.

A class is fairly and adequately represented where counsel are qualified, experienced, and generally able to conduct the litigation on its behalf. *See Dittimus-Bey v. Taylor*, 244 F.R.D. 284 (D.N.J. 2007). The combined leadership of David E. Plunkett, J. Douglas Richards, Michael M. Buchman, and Timothy D. Battin will fairly and adequately represent the indirect purchaser class. *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515 (S.D.N.Y. 1996).

1. Proposed Interim Class Counsel

David E. Plunkett of WWRP is more than capable to fulfill the duties of Class Counsel. Mr. Plunkett is an experienced litigator who has represented a wide range of clients in federal

⁸ "In deciding on appointment [of counsel], courts in class actions have traditionally exercised case-by-case discretion, often relying on competing counsel to work out an arrangement, also known as private ordering." *Third Circuit Task Force Report: Selection of Class Counsel*, 208 F.R.D. 340, 356 (2002); *see also Manual* § 21.271, 21.272.

and state courts throughout the country. His class action experience includes extensive work on a racketeering and fraud case against Lucent Technologies, Inc., in which his former Chicago firm acted as lead counsel and secured a substantial recovery for a class of small business owners.

Mr. Plunkett's experience defending against class actions also brings a unique perspective to his proposed role of Interim Class Counsel. Mr. Plunkett and his Chicago firm successfully coordinated the defense of RealNetworks, Inc. in multidistrict class-action litigation relating to purported privacy violations against users of the company's software. The strategies and knowledge developed by Mr. Plunkett in the course of defending against those class actions allegations will undoubtedly serve to enhance his effectiveness in representing the proposed class of indirect purchasers in the instant litigation.

Mr. Plunkett's broad experience in complex commercial litigation also will serve the interests of the proposed class. Through his years of practice in Detroit, Washington, D.C., Chicago and other areas, Mr. Plunkett has represented individuals, small companies and large multi-national corporations, including CNA Financial Corp., American Express Financial Advisors, Aon Corp., Target Corp., Snap-on, Inc., Olin Corp. and Underwriters at Lloyd's London. This experience representing both individuals and Fortune 500 clients helps Mr. Plunkett not only appreciate the concerns of individual class members, but also has prepared him for waging battle against major corporate defendants.

Mr. Plunkett's firm, WWRP, is committed to devoting its significant resources to this litigation. WWRP is a 20-lawyer firm with a wealth of experience in complex litigation. The firm's offices in Birmingham, Michigan allow convenient access to the Court and provide ample facilities for attorney conferences, document storage and review, and litigation war rooms. As set forth in the firm resume attached as Exhibit B to the Plunkett Decl., Mr. Plunkett will be able

to draw on the abilities of some of the most effective litigators in Michigan, including his partners Ernest Essad, Richard Rassel and Thomas Plunkett, who boast more than 80 years combined experience in commercial litigation in Michigan federal and state courts.

2. Proposed Interim Executive Committee Members

Where proposed members of the Interim Executive Committee “include some of the most experienced lawyers in the United States in the prosecution of antitrust ... class actions” and demonstrate that they are “ready, willing and able to devote the resources necessary to litigate this case vigorously,” such counsel are qualified to serve on the Interim Executive Committee. *NASDAQ Market-Makers*, 169 F.R.D. at 515. “The experience and expertise of each individual firm will also significantly aid the proposed class.” *Nowak*, 240 F.R.D. at 361. As set forth in the firm resumes attached as Exhibits C, D and E to the Plunkett Decl., the proposed members of the Interim Executive Committee are among the most experienced attorneys in the country in the prosecution of complex antitrust class actions. They have repeatedly served as lead or co-lead counsel in such cases and will be able to draw upon their experience and resources to effectively assist the proposed Interim Class Counsel here. These individuals have demonstrated their ability to work cooperatively with the proposed Interim Class Counsel, with each other, and with counsel for other plaintiffs.

J. Douglas Richards of Cohen Milstein: Proposed Interim Executive Committee member J. Douglas Richards is one of the most respected members of the plaintiffs’ bar. Mr. Richards has extensive experience in the successful prosecution of antitrust class actions. He has been co-lead counsel for the plaintiffs in myriad class actions, including in cases against Microsoft in New York state court (resulting in a settlement providing benefits of more than \$120 million for New York consumers and needy public schools) and in *In re Reformulated Gasoline (RFG) Antitrust & Patent Litig.*, No. 2:05-md-1671 (C.D. Cal.) (resulting in a \$48

million settlement). Mr. Richards and his firm filed the first indirect purchaser action to be commenced in this case in *F.G. Farah & Partners, LLC v. Tecumseh Prods. Co.*, No. 2:09-cv-11109 (E.D. Mich.).

Judges and litigants alike recognize Mr. Richards's contributions on behalf of plaintiffs in antitrust class actions. See *In re Buspirone Antitrust Litig.*, No. 1:01-md-1413 (S.D.N.Y.) (Judge Koeltl praising plaintiffs' counsel, including Mr. Richards in his capacity as co-lead counsel, for doing "a stupendous job" in suit resulting in \$90 million settlement); *In re Relafen Antitrust Litig.*, No. 01-md-12239-WGY (D. Mass.) (presiding Judge Young stated that the settlement of \$75 million in a case in which Mr. Richards served as co-lead counsel for plaintiffs was "the result of a great deal of very fine lawyering"); *In re Visa Check/Mastermoney Antitrust Litig.*, 96-cv-5238 (E.D.N.Y.) (lead counsel Lloyd Constantine formally credited Mr. Richards for having been a "consistent source of helpful high level advice" in case resulting in the largest antitrust settlement in the over 100 year history of the Sherman Act – \$3 billion). Mr. Richards has also argued more than twenty-five appeals in the federal and state appellate courts, including to the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Mr. Richards's firm, Cohen Milstein, is a leading antitrust class action firm with an established track record in the prosecution of complex antitrust class actions, and is counsel for the plaintiff who filed the first compressors indirect purchaser antitrust class action complaint in the United States. The firm is a highly respected leader of the plaintiffs' antitrust bar, and has a unique knowledge of antitrust class actions and unparalleled experience in prosecuting such cases, having repeatedly served as lead counsel in major antitrust cases. See *Cohen Milstein Firm Resume* (attached as Exhibit C of the Plunkett Decl.). With over 50 attorneys in four domestic offices, Cohen Milstein is one of the largest firms in the nation dedicated primarily to the prosecution of class actions. Cohen Milstein has one of the largest plaintiffs' antitrust class

action practices in the bar, with approximately 15 attorneys dedicated to the practice. This size allows Cohen Milstein to avail itself of resources and expertise not available to smaller firms. Reflecting its status as a leader of the plaintiffs' bar, Cohen Milstein is involved in class actions that are "historic in nature"⁹ and spearheads innovations in the field. It is therefore not surprising that the firm was chosen as one of the top antitrust class action firms in the country in the 2009 rankings of the Legal 500.¹⁰

Cohen Milstein has either won at trial or successfully settled (often on the eve of trial) claims against some of the world's largest corporations. Cohen Milstein attorneys – partners and associates – bring to their practice experiences rare in the plaintiffs' bar, including clerkships on the leading Circuit and District Courts. Among other benefits, such experiences are one reason why Cohen Milstein attorneys are known for prosecuting cases in a manner reflecting the highest professional standards.

In addition, Seth R. Gassman, the lead associate working on this matter, has extensive experience representing victims of anticompetitive conduct, including in *In re Chocolate Confectionary Antitrust Litigation*, No. 08-md-1935 (M.D. Pa.) where he serves on the executive committee representing a proposed class of direct purchasers of chocolate products who allege that the major U.S. chocolate manufacturers and certain of their affiliated foreign entities conspired to fix prices. In appointing Cohen Milstein to the executive committee, from which the firm will "provide leadership and direction" as the case progresses, the Court noted Mr. Gassman's "significant knowledge of the legal and factual issues presented by the pending action." Mr. Gassman is also actively involved in *In re Intel Corporation Microprocessor*

⁹ *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 142 (N.D. Cal. 2004) (discussing certification of class covering 1.5 million women in sex discrimination case).

¹⁰ The Legal 500 (2009 Ed.) (referring to Cohen Milstein's lead associate in this matter as being "active in some heavy duty [antitrust] cases").

Antitrust Litigation, No. 05-cv-1717 (D. Del.), where Cohen Milstein serves as interim co-lead counsel on behalf of a proposed class of computer purchasers who allege that Intel's monopoly over microprocessors increased the prices consumers paid for personal computers.

Michael M. Buchman of the Pomerantz Firm: Proposed Interim Executive Committee member Michael M. Buchman has served as lead or co-lead counsel in many other antitrust class actions including some of the most prominent and hard-fought antitrust class actions such as *Twombly v. Bell Atl. Corp.*, 425 F.3d 99 (2d Cir. 2005), *rev'd*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Kruman v. Christie's Int'l PLC*, 284 F.3d 384 (2d Cir. 2002).¹¹ Mr. Buchman possesses skills well-suited to this case involving an international price-fixing conspiracy. He has received an LL.M. in International Antitrust and Trade Law from Fordham University School of law and is well qualified to direct discovery in Brazil, Italy and other foreign countries where information relevant to this case will be obtained. He has effectively managed in a leadership capacity a number of antitrust class action cases including:

- *In re Buspirone Antitrust Litigation*, No. 01-md-1413 (S.D.N.Y.) (Koeltl, J.) (\$90 million settlement);
- *In re Relafen Antitrust Litigation*, No. 01-md-12239-WGY (D. Mass. 2001) (\$75 million settlement);
- *In re Microsoft Antitrust Litigation* (*Cox v. Microsoft*) No. 105193/00 (Sup. Ct. N.Y.) (\$120 million settlement on behalf of New York consumers);
- *In re Augmentin Antitrust Litigation*, No. 02-cv-445 (E.D. Va.) (\$29 million settlement);
- *In re Christie's/Sotheby's Antitrust Litigation* (*Kruman v. Christie's*) No. 01-cv-7309 (S.D.N.Y.) (*Kaplan, J.*) (\$40 million settlement on behalf of foreign purchasers/sellers);
- *In re Pineapple Antitrust Litigation*, No. 04-md-1628-RMB-MHD (pending – serving as Lead Counsel);

¹¹ Messrs. Richards and Buchman worked together as partners in two different firms for approximately nine years.

- *In re Wellbutrin SR/Zyban Antitrust Litigation*, No. 04-cv-5525 (E.D. Pa.) (pending – serving as de facto Co-Lead Counsel); and
- *In re Reformulated Gasoline (RFG) Antitrust & Patent Litig.*, No. 05-md-1671 (C.D. Cal.) (\$48 million settlement).

Mr. Buchman's representation in antitrust class action cases has been praised by courts. He has been "tenacious and skillful" (*Christie's*) (Kaplan, J.), done a "stupendous job" (*Buspirone*) (Koeltl, J.) and has presented a settlement which was the result of "a great deal of fine lawyering." (*Relafen*) (Chief Judge Young).

The Pomerantz law firm, of which Mr. Buchman is a partner, is one of the preeminent law firms engaged in plaintiffs' antitrust, securities and other complex litigation in the United States. Pomerantz, with five offices across the country, has been involved in major complex litigation for more than seventy years and has recovered over a billion dollars for its clients. The firm is deep in talent and well-capitalized, allowing it to dedicate considerable human and other resources and to advance expenses in numerous contingent class action cases simultaneously to the fullest extent necessary to achieve the best possible result for its clients. Courts have consistently acknowledged Pomerantz's ability to vigorously pursue the claims of class members. In granting the fee request in *In re Salomon Brothers Treasury Litigation*, No. 91-cv-5471-RPP (S.D.N.Y.), where the firm successfully negotiated a \$100 million settlement for the class in a complex antitrust and securities case, Judge Patterson stated:

I am going to approve the settlement, and I am going to approve the attorneys' fees that you have requested with cost.

As I am doing it so summarily, does not mean I have not considered it at length. But it does not need that much consideration because I've observed the conduct of the attorneys involved here. They get the work done, and it was a tough one.

I think that there were a lot of people who thought there was going to be no recovery at all in this case.

And in *In re Wiring Devices Antitrust Litigation*, MDL Docket No. 331 (E.D.N.Y. Sept. 9, 1980), where the firm was again lead counsel, Chief Judge Jack B. Weinstein stated:

Counsel for the plaintiffs I think did an excellent job... They are outstanding and skillful. The litigation was and is extremely complex. They assumed a great deal of responsibility. They recovered a very large amount given the possibility of no recovery here which was in my opinion substantial.

Marc I. Gross a senior partner of Pomerantz, with three decades of experience in antitrust and securities fraud class actions, will work alongside Mr. Buchman in this action. Mr. Gross is Lead Counsel in many of the Firm's major pending cases, and has been an active participant in many of the Firm's antitrust class actions, including *In re NASDAQ Antitrust Litigation* (S.D.N.Y.), *In Re Lorazepam & Clorazepate Antitrust Litigation* (D.D.C); *Shelter Realty v. Allied Maintenance* (S.D.N.Y.), and others. Mr. Gross also has extensive trial experience, including *In re Zila Inc. Securities Litigation*, (D. Ariz.) and *In re Zenith Labs Securities Litigation.*, (D.N.J.).

In sum, Mr. Buchman and his firm have successfully prosecuted numerous antitrust class actions, obtaining impressive recoveries on behalf of various antitrust classes, and their diligence and expertise in antitrust issues have been acknowledged by the courts.

Timothy D. Battin of Straus & Boies: Proposed Interim Executive Committee member Timothy Battin is the managing partner of Straus & Boies and has extensive experience in the prosecution of antitrust class actions. Litigating in state and federal courts around the country, Mr. Battin has fought against anticompetitive conduct in numerous industries, including, *inter alia*, in the pharmaceutical, food additive, vitamin and computer industries.

Mr. Battin has successfully prosecuted historic class actions. In *Giral v. F. Hoffman-La Roche Ltd.*, No. 98-CA-7467 (D.C. Sup. Ct., March 4, 2002 ("Indirect Purchaser Vitamins Litig."), Straus & Boies, as sole lead counsel, secured \$187 million for the class – the then-largest indirect purchaser class action settlement. In *In re Monosodium Glutamate (MSG) and*

Nucleotides Litigation, No. D-0202-CV-200306168 (N.M. Dist. Ct. County of Bernalillo, Oct. 25, 2006) (“*MSG Litig.*”), Straus & Boies, as sole lead counsel, secured \$40 million on behalf of indirect purchasers. Additionally, in *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. 02-md-1486 (N.D. Cal.), Straus & Boies, as co-lead counsel, is pursuing approval of a partial settlement in excess of \$100 million.¹²

Mr. Battin effectively coordinates the efforts of co-counsel in class cases. Straus & Boies’ initial complaint includes ten law firms (the largest group of plaintiff firms in the indirect purchaser cases), bringing claims on behalf of indirect purchasers in over twenty states.¹³ In the *Indirect Purchaser Vitamins Litig.*, Mr. Battin coordinated the efforts of over 90 firms and in the *MSG Litigation*, he supervised the work of approximately 20 firms. In those and other cases, Mr. Battin successfully prosecuted claims against worthy opposition by marshaling the resources of top-quality counsel.¹⁴

Other experienced attorneys at Straus & Boies, including Mark Schirmer and Ian Otto, will assist in this litigation. Mr. Schirmer, a former Senior Trial Attorney in the Eastern Regional office of the U.S. Commodity Futures Trading Commission, has more than 20 years experience in prosecuting and defending complex civil, regulatory and criminal matters. Mr. Otto, with a background in economics, has ten years experience prosecuting antitrust cases.

Straus & Boies has advanced millions of dollars to defray the substantial expenses associated with the prosecution of class cases. Likewise, Mr. Battin and his firm have recovered

¹² Recently, Mr. Battin was appointed co-lead counsel in *In re Processed Egg Products Antitrust Litigation*, MDL No. 2002 (E.D. Penn.).

¹³ It currently represents the most indirect purchaser plaintiffs in this litigation, including plaintiffs from Arizona, California, Florida, North Carolina, and Wisconsin.

¹⁴ Straus & Boies has also been at the forefront of novel legal issues in indirect purchaser litigation. In *In re Oriented Strand Board (OSB) Antitrust Litigation*, No. 06-md-826 (E.D. Pa.), Straus & Boies, as co-lead counsel, achieved certification of one of the first indirect purchaser contested classes in federal court since the passage of the Class Action Fairness Act.

hundreds of millions of dollars for classes they represented. In sum, Straus & Boies possesses the human and financial resources to effectively prosecute this litigation.

As members of the Interim Executive Committee, Messrs. Battin, Richards, Buchman, and Plunkett will ensure the vigorous, fair and efficient prosecution of this litigation.

C. Almost All of Indirect Purchaser Class Plaintiffs Support the Proposed Interim Class Counsel and Executive Committee Appointments.

Counsel for the indirect purchaser plaintiffs have joined together to promote the efficient and expeditious prosecution of this complex antitrust litigation. The proposed leadership structure is the result of discussions among all indirect purchaser counsel, including a number who withdrew their own names from consideration in the interest of building consensus. *See* Exhibit A to Plunkett Decl.

The vote of counsel as to leadership issues merits this Court's serious consideration.¹⁵ The support for Messrs. Plunkett, Richards, Buchman, and Battin reflects the considered judgment by the vast majority of indirect purchaser plaintiffs' counsel. *See, e.g., In re Rail Freight Fuel Surcharge Antitrust Litig.*, 2008 WL 1883447, *2 (D.D.C. April 28, 2008) (establishing leadership structure supported by majority of plaintiffs while rejecting argument that court should only defer to private ordering when there is complete unanimity among counsel). The appointment of other interim class counsel may jeopardize private ordering by discouraging future efforts at compromise and consensus building, efforts that are central to private ordering.

IV. CONCLUSION

For the reasons set forth herein, the majority of indirect purchaser plaintiffs respectfully move for the appointment of David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C.

¹⁵ Indeed, lawyers representing 92% [11/12] of plaintiffs who filed indirect purchaser Class Actions support the structure proposed herein. Likewise, 88% [22/25] of law firms representing indirect purchaser class action plaintiffs support this leadership structure.

as Interim Class Counsel, and J. Douglas Richards of Cohen Milstein Sellers & Toll PLLC, Michael M. Buchman of Pomerantz Haudek Grossman & Gross LLP, Timothy D. Battin of and Straus & Boies LLP, and David E. Plunkett of Williams, Williams, Rattner & Plunkett, P.C., as Interim Executive Committee members.

Dated: September 9, 2009

Respectfully submitted,

/s/ David E. Plunkett
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